

1 Brian T. Rekofke
 2 Ross P. White
 3 Witherspoon, Kelley, Davenport & Toole
 4 1100 US Bank Building
 5 422 West Riverside
 6 Spokane, WA 99201
 7 (509) 624-5265

8 Attorneys for LDS Church and Donald C. Fossum

9
 10 UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 THOMAS A. WAITE,

13 Plaintiff,

14 vs.

15 THE CHURCH OF JESUS CHRIST OF
 16 LATTER DAY SAINTS d/b/a
 17 CORPORATION OF THE PRESIDING
 18 BISHOP OF THE CHURCH OF JESUS
 19 CHRIST OF LATTER DAY SAINTS, a
 20 Utah corporation, d/b/a CORPORATION
 21 OF THE PRESIDENT OF THE CHURCH
 22 OF JESUS CHRIST OF LATTER DAY
 23 SAINTS, a Utah corporation; DONALD C.
 24 FOSSUM; and STEVEN D. BROADHEAD,

25 Defendants.

26 Case No.: CV-05-399-EFS

27
 28 AFFIDAVIT OF BRIAN T.
 29 REKOFKE IN SUPPORT OF
 30 MOTION TO COMPEL

31 STATE OF WASHINGTON)
 32 County of Spokane)
 33 :ss

34 BRIAN T. REKOFKE, being first duly sworn, upon oath, deposes and says:

35 1. I am one of the attorneys for the Church defendant and Donald
 36 Fossum, and make this Affidavit on personal knowledge.

37 2. On February 26, 2007, I caused to be served on plaintiff's counsel
 38 Interrogatories and Third Request for Production concerning Mr. Nordstrom's
 39 contacts with missionaries or former missionaries of the Church.

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1 3. This discovery was served because there had been agreement reached
 2 among counsel on or about November 8, 2006, that there would be no ex parte
 3 contact by Plaintiff's counsel with former Church missionaries or other
 4 individuals affiliated with the LDS Church, unless and until the contact issue was
 5 framed and decided by the Court.

6 4. Subsequent to this agreement, Plaintiff's counsel filed the Declaration
 7 of James Ross, a former missionary.

8 5. Not only was the Ross declaration signed and filed after the
 9 agreement of no ex parte contact, the body of the declaration reveals there were
 10 other contacts and perhaps even taped conversations.

11 6. Plaintiff answered the interrogatories on March 27, 2007, a copy of
 12 which is attached hereto as Exhibit A.

13 7. Plaintiff provided no information as requested in Interrogatories 2 -
 14 5 regarding the date, location, type of contact and whether any documents were
 15 created. No documents or privilege log were produced.

16 8. On April 2, 2007, I wrote a letter to Mr. Nordstrom requesting
 17 answers to the interrogatories.

18 9. By letter dated April 5, 2007, Plaintiff's counsel indicated memoranda
 19 of witness' oral statements were work product and therefore not discoverable.

20 10. Information concerning when the contacts occurred, who made them,
 21 what was discussed is not protected and defendants are entitled to information in
 22 that regard, particularly in view of the apparent breach of an agreement to have
 23 no ex-partie contact with former missionaries.

24 11. Accordingly, Defendants seek answers to Interrogatories No. 2-5 and
 25 respectfully reserve the right to move to compel production of documents
 26 generated depending on the facts and circumstances of the contacts.

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AFFIDAVIT OF BRIAN T. REKOKFE IN SUPPORT
 OF MOTION TO COMPEL - 2
 G:\C\Church of Jesus Christ 14061\Waite 3\Pleadings\Motion to Compel
 Documents\Affidavit of BTR in Support 040907 (kh).wpd

WITHERSPOON, KELLEY, DAVENPORT & TOOLE
 A PROFESSIONAL SERVICE CORPORATION
 ATTORNEYS & COUNSELORS
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Brian T. Rekofke

SUBSCRIBED AND SWORN to before me this 11th day of April,
2007.



Print Name: Kimberley Lee Hunter
NOTARY PUBLIC in and for the State
of Washington, residing in Spokane
My Commission expires: 3/15/09

AFFIDAVIT OF BRIAN T. REKOKFE IN SUPPORT
OF MOTION TO COMPEL - 3

G:\C\Church of Jesus Christ 14061\Waite 3\Pleadings\Motion to Compel
Documents\Affidavit of BTR in Support 040907 (kth).wpd

WITHERSPOON, KELLEY, DAVENPORT & TOOLE
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS & COUNSELORS
1100 U.S. BANK BUILDING
422 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0302
(509) 624-5265

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April, 2007:

1. I electronically filed the foregoing **AFFIDAVIT OF BRIAN T. REKOFKE IN SUPPORT OF MOTION TO COMPEL** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

(for Waite) Richard C. Eymann and Stephen L. Nordstrom;
(for Brodhead) Andrew C. Smythe
2. I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants at the address listed below: **None**.
3. I hereby certify that I have hand delivered the document to the following participants at the addresses listed below: **None**

Kimberley L. Hunter
Witherspoon, Kelley, Davenport & Toole, P.S.
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